



INTERIOR BOARD OF INDIAN APPEALS

Darrell Rathkamp v. Billings Area Director, Bureau of Indian Affairs

21 IBIA 144 (01/09/1992)

Related Board cases:

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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

DARRELL RATHKAMP

v.

BILLINGS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 91-91-A

Decided January 9, 1992

Appeal from the awarding of an agricultural lease.

Vacated and remanded.

1. Board of Indian Appeals: Jurisdiction--Indians: Leases and Permits:
Generally

Decisions concerning whether or not to grant a lease of trust or restricted land are committed to the discretion of the Bureau of Indian Affairs. In reviewing such decisions, it is not the function of the Board of Indian Appeals to substitute its judgment for that of the Bureau. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

2. Indians: Leases and Permits: Generally--Indians: Leases and Permits:
Secretarial Approval

The owner of an interest in individually owned Indian land may withdraw his/her consent to a lease at any time prior to the approval of the lease by the Bureau of Indian Affairs.

3. Indians: Leases and Permits: Secretarial Approval

When the Bureau of Indian Affairs obtains knowledge that there were improprieties in the execution of a negotiated lease of trust or restricted land, it has a duty to investigate the matter. This duty is inherent in and the essence of the Secretary's trust responsibility to approve such leases.

APPEARANCES: Martin J. Elison, Esq., Hardin, Montana, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Darrell Rathkamp seeks review of an April 11, 1991, decision of the Billings Area Director, Bureau of Indian Affairs (Area Director;

BIA), awarding an agricultural lease on Crow Allotment 1205, Shouts Aloud, to Mac Castillo. For the reasons discussed below, the Board of Indian Appeals (Board) vacates that decision and remands this case for further proceedings in accordance with this opinion.

Background

Crow Allotment 1205 was included in General Lease Announcement 90-2, for which bids were scheduled to be opened on July 11, 1990. The allotment was deleted from the advertisement when negotiated leases were presented by Castillo on March 8, 1990, and by appellant on June 27, 1990.

An August 9, 1990, memorandum in the administrative record indicates that BIA had concerns about the authenticity of one of the signatures that appeared on both of the negotiated leases. Furthermore, on September 18, 1990, appellant wrote to the Crow Agency Superintendent (Superintendent), questioning the authenticity of other signatures on Castillo's negotiated lease. The Superintendent wrote to two of the landowners, Kevin Little Light Old Bull (Old Bull) and Fannie Rides Horse Red Thunder (Red Thunder), asking them to verify their signatures on both negotiated leases. The Superintendent indicated that Old Bull had signed one of the leases but not the other, and that Red Thunder had signed both leases.

An October 31, 1990, note from Old Bull stated: "To the best of my knowledge I did not consent to lease on allotment no. 1205."

In a November 28, 1990, note to appellant's leasing agent, Red Thunder stated: "I want you to know that some of the signatures are wrong. Randolph and Eli also my signature have been sign[ed] by someone. I don't know how but those signatures aren't [ours]." Red Thunder did not, however, identify which lease contained the improper signatures. Consequently, on December 6, 1990, BIA wrote Red Thunder, asking her to clarify which lease contained the improper signatures.

A January 3, 1991, unsigned memorandum to the file recites:

Ms. Fannie Rides Horse Red Thunder came in on January 3, 1991, at about 3:00 P.M. to authenticate the signatures on the Castillo and Rathkamp leases on Allotment 1205. She stated that the signature on the Darrell Rathkamp lease was her signature. The signature on the Castillo lease was not her signature and she also mentioned that she did not know the "witnesses" to the signature on the Castillo lease.

Ms. Rides Horse Red Thunder then stated that she wanted her name withdrawn from the Rathkamp lease and that she had made the decision to "go with" the Castillo lease. She submitted a hand written note addressed to the Superintendent to this effect and signed the Castillo lease which was witnessed by Realty Clerk, Mervel Harris. Ms. Rides Horse Red Thunder then stated that she would probably inform her brothers, Eli and Randy, to come in and

change their signatures on the lease also. Ms. Red Thunder left at approximately 3:20 P.M.

The January 3, 1991, note submitted to the Superintendent, which is apparently signed by Red Thunder, Eli Rides Horse, Randy Rides Horse, and Allie Little Light, states: "Want to withdraw signature on the Darrell Rathcamp lease Allot 1205 that I would like to sign with Castillo. I have sign[ed] Castillo lease."

A January 10, 1991, letter from the Superintendent to appellant's leasing agent states:

On September 8, 1990, Darrell Rathkamp questioned the authenticity of some signatures on allotment no. 1205 Shouts Aloud. Letters were mailed to [Red Thunder] and [Old Bull], requesting them to come in or verify in writing which signature was correct, on Mr. Rathkamp's or Mr. Castillo's lease.

Eli Rideshorse, Allie Littlelight, and Randolph Rideshorse came in and verified their signatures on Mr. Rathkamp's lease and said that the signatures on Mac Castillo's [were] not theirs, as [Red Thunder] did in writing to you on November 11, 1990. [Old Bull] never responded to the request. [1/]

On January 3, 1991, [Red Thunder] came in and filed a letter stating that she is withdrawing her signature from Mr. Darrell Rathkamp's lease and in the same letter, [Red Thunder] will sign Castillo's lease. Eli Rides Horse, Randolph Rides Horse, and Allie Littlelight, have concurred with [Red Thunder's] letter by signing the same letter and the Castillo lease.

With the above events and looking at the leases again as to who completed a lease on allotment no. 1205, Mr. Castillo has 100 percent signatures because [Old Bull] has signed Mr. Castillo's lease but not Mr. Darrell Rathkamp's lease, and with this the lease will be awarded to Mr. Castillo. [2/]

By letter dated February 7, 1991, appellant appealed this decision. The Superintendent responded to appellant on February 20, 1991, repeating that the lease would be awarded to Castillo, and giving appellant notice of his appeal rights.

1/ This statement is incorrect. As previously mentioned, Old Bull responded to the Superintendent's letter by writing that he did not recall consenting to the leasing of his property.

2/ Based upon Old Bull's statement, his signature on Castillo's lease is also suspect, as is the Superintendent's conclusion that Castillo had signatures from 100 percent of the landowners.

On March 12, 1991, the Superintendent approved contract O-8883 for allotment 1205. The lease, which covers 35 acres of dry farm and 115 acres of grass, has Castillo as lessee; runs from October 1, 1990, through September 30, 1995; and provides for a total rental amount of \$4,255.

Appellant filed a notice of appeal, dated March 22, 1991, with the Area Director. Appellant argued that, because of the forgeries contained in Castillo's original negotiated lease,

[a]s of July 10, 1990, when Allotment 1205 was deleted from the bidding, [appellant] was the only person entitled to receive the lease. Mr. Castillo cannot be allowed to profit from his fraudulent activities. Whether or not, after the forgeries were discovered, Mr. Castillo was able to obtain the approval of the beneficiaries is beside the point. The fact that the B.I.A. apparently participated in Mr. Castillo's attempts to subvert the system, especially after the forgeries were called to the Superintendent's attention, presents an extremely negative appearance for the entire leasing system.

In his April 11, 1991, response to the appeal, the Area Director affirmed the awarding of the lease to Castillo. The decision states:

The record indicates confusion as to the validity of some of the landowner signatures. The file does show the agency sent correspondence to landowners, and were visited by landowners in an attempt to verify the signatures. During this period of time, [appellant's] lease and Mr. Castillo's lease were filed with the agency, but none were approved by the superintendent because of the uncertainty.

One landowner [Red Thunder], even admitted signing [appellant's] lease and then asking the Bureau of Indian Affairs (BIA) to withdraw her signature from [appellant's] lease and indicating a desire to finalize a lease with Mr. Castillo. No lease was approved at the time of her request.

The record indicates all the landowners did agree to award the lease to Mr. Castillo and in accordance with 25 CFR 162.3, Grants of lease by owners or their representatives; 25 CFR 162.5, Special Requirements and provisions; and 25 CFR [162.6], Negotiation of leases; we feel the Castillo lease accommodates landowner interests and desires.

We considered the fact that [appellant's] total value offered on the lease is \$4,408 and Mr. Castillo's total value is only \$4,255, and felt the landowners by agreeing to the Castillo lease are willing to forgo the additional \$153. The value offered by Mr. Castillo, we feel, is still within reasonable market values.

The Board received appellant's notice of appeal from this decision on May 15, 1991. No briefs were filed on appeal. 3/

Discussion and Conclusions

In his appeal to the Board, appellant continues to argue that Castillo must not be allowed to benefit from his fraudulent activity, and that the lease must be awarded to appellant because his was the only proper lease before BIA in July of 1990. Appellant argues: "The fact that Mr. Castillo was apparently able to obtain landowner approval for his lease after his forgery was discovered is irrelevant except that, by implication, it indicates additional foul play" (Notice of Appeal at 3). Appellant suggests that some of the landowners were bribed by Castillo into signing a new lease. Appellant concludes that BIA has breached its responsibility to the Indian landowners by permitting, and perhaps even assisting, a forger to take advantage of them.

[1] The Board has previously stated that the awarding of a lease of trust or restricted property is generally a discretionary decision. See Metzger v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 13 IBIA 314, 319 n.5 (1985); Wray v. Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 146, 154 n.4, 91 I.D. 43, 48 n.4 (1984). In reviewing BIA's discretionary decisionmaking, it is not the Board's role to substitute its judgment for that of BIA. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion. Cf., e.g., Sauk-Suiattle Indian Tribe v. Portland Area Director, 20 IBIA 238 (1991) (application for Core Management grant); S & H Concrete Construction, Inc. v. Acting Phoenix Area Director, 20 IBIA 176 (1991) (application for loan under the Indian Revolving Loan program); White v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 15 IBIA 142 (1987) (conveyance of trust or restricted land).

3/ On Nov. 12, 1991, after the time for filing an opening brief in this case, the Board received a letter from counsel for appellant, stating that he had never received any information concerning briefing privileges. By order dated Nov. 18, 1991, the Board responded:

"The Board's file in this matter shows that a notice of docketing, which established the briefing times for this appeal, was issued on July 1, 1991. The notice was sent to [counsel], apparently at his previous firm's address. However, the return receipt card shows the signature of 'M Elison' with a receipt date of July 10, 1991. The notice stated that appellant's opening brief was due within 30 days from receipt of the notice. No opening brief was received. Furthermore, the return receipt card for the copy of the notice of docketing sent to appellant shows the signature of Joan Rathkamp with a date of receipt of July 6, 1991.

"Under these circumstances, the Board finds that this appeal has been ready for decision since the time for filing appellant's opening brief passed without the filing of a brief. The additional information contained in Elison's letter to the Board will not be considered in deciding this matter."

[2] Appellant argues that BIA should have awarded the lease to him because his was the only properly prepared lease before BIA in July 1990. This argument overlooks the fact that appellant himself did not raise questions about Castillo's negotiated lease until September 1990. As noted above, BIA had also raised questions about one of the signatures on Castillo's lease in August 1990. By the time BIA was able to obtain signature verification from the landowners, those individuals stated that they wanted to withdraw their acceptance of appellant's negotiated lease. An Indian landowner can withdraw consent to a lease until the lease is actually approved by BIA. Moccasin v. Acting Billings Area Director, 19 IBIA 184 (1991). Because there is no evidence that the Superintendent had authority to grant a lease on behalf of those individuals who had withdrawn their consent, when that acceptance was withdrawn, he lacked authority to approve appellant's lease. ^{4/} BIA did not err by not approving appellant's lease under the circumstances present here.

[3] However, that holding does not mean that BIA properly approved Castillo's lease. When BIA obtains knowledge that there are improprieties in the execution of a negotiated lease of trust or restricted land, it has a duty to investigate the matter. This duty is inherent in and the essence of the Secretary's trust responsibility to approve such leases. BIA began to fulfill that responsibility as to the first negotiated lease presented by Castillo by inquiring as to whether certain signatures were legitimate. It learned that at least some signatures were not legitimate. However, when those same persons whose signatures were apparently forged stated that they wanted to enter into a lease with Castillo, the person apparently responsible for the forgeries, BIA had abundant reason to question further the proprieties of the negotiation process. In merely accepting at face value Castillo's second negotiated lease, BIA failed to fulfill its responsibilities to all individuals owning an interest in allotment 1205.

Because there were obvious questions relating to the circumstances causing those landowners to agree to Castillo's lease, as well as questions raised by the fact that the rental amount was less under the Castillo lease than that being offered by appellant and by the duplication of apparently authentic signatures on both leases, BIA should have inquired further into the matter. In the absence of such an inquiry, the Board cannot hold that BIA considered all legal prerequisites to the exercise of its discretion, or properly exercised that discretion in awarding the lease to Castillo. This case must, therefore, be remanded to BIA for further investigation into the circumstances surrounding the negotiation of the Castillo lease. Such an

^{4/} 25 CFR 162.2 provides:

“(a) The Secretary may grant leases on individually owned land on behalf of: (1) Persons who are non compos mentis; (2) orphaned minors; (3) the undetermined heirs of a decedent's estate; * * * and (5) Indians who have given the Secretary written authority to execute leases on their behalf.”

investigation can be conducted in several ways, including but not limited to a hearing at the agency with all affected persons present.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the April 11, 1991, decision of the Billings Area Director is vacated, and this matter is remanded to him for further proceedings in accordance with this opinion.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed
Anita Vogt
Administrative Judge